

REMARKS

These remarks are submitted in response to the Advisory Action of December 17, 2003 (“Advisory Action”) and as a supplement to the Amendment filed December 2, 2003 (“Amendment”), which was in response to the Final Office Action of September 9, 2003. A Request for Continued Examination (“RCE”) is filed with this Supplemental Response. Please consider this Supplemental Response and the Amendment in combination as being Applicants’ response to the Final Office Action of September 9, 2003.

1. Proposed language raising new issues.

The Advisory Action noted that the amendments proposed in the Amendment would not be entered because they raise new issues that would require further consideration. Since Applicants are submitting an RCE with the applicable fee, entry and consideration of the amendments are respectfully requested. Also, careful reconsideration of the arguments contained in the Amendment and the Supplemental Response is respectfully requested.

2. Rejections overcome by previously filed Amendment.

The Advisory Action noted that the rejection of claim 7 under 35 USC 112, second paragraph had been overcome by the Amendment. Applicants thank the Examiner for taking this position.

3. Contrary to the Advisory Action’s position, the language “single panel” is within the four corners of the original specification, as a text search of the specification at the USPTO website shows.

The Advisory Action noted that the request for reconsideration had been considered but did not place the application in condition for allowance because “[n]owhere in the four corners of applicant’s original specification is the language ‘single panel’ or ‘single flexible panel’ found.” *Advisory Action*, p. 2, ¶5.

The Advisory Action’s position is not sustainable. A text search of the application at the USPTO website reveals that the language “single panel” is within the four corners of the text. Specifically, after explaining that, in one embodiment, the column is formed between two panels,

the application goes on to state that “[i]n further embodiments the column 40 may be placed on a single panel.” *Specification As Filed*, p. 5, ll. 8-9; *Specification as Published*, ¶ 0024. Also, in the summary section of the application, after stating that in one embodiment, the “flexible pouch compris[es] a compartment formed by a first panel sealed to a second panel,” the summary goes on to say that in another embodiment “[a] flexible pouch ... compris[es] a compartment defined by a panel.” *Specification As Filed*, p. 2, ll. 14-15 & 20-21; *Specification as Published*, ¶¶ 0010 & 0012. In other words, the specification discloses two different embodiments of flexible pouches. One embodiment has a compartment defined by two or more panels and the other embodiment has a compartment defined by a single panel.

It is clear that the language “single panel” is literally within the four corners of the specification. Therefore, Applicants respectfully request reconsideration and withdrawal of the new matter rejection of claims 23 and 35.

4. The method of sealing does not need to be defined because the point of the limitation in claims 22-46 is not how the seals are made, but that there is no variation between the method used to seal the first and second surfaces together and the method used to form the internal seal of the column.

The Advisory Action noted that the request for reconsideration had been considered but did not place the application in condition for allowance because “[t]he method of sealing used to seal the first surface to the second surface has not be [sic] defined to warrant the language ‘the same method’.” *Advisory Action*, p. 2, ¶5.

Applicants respectfully submit that the method does not need to be defined because the point of the limitation is not to describe the specific method utilized to form the pouch perimeter seals 13 and the internal column seal (i.e., the piercing point 24 at the internal end of the column 40), but to indicate that the pouch perimeter seals 13 and the internal column seal 24 are formed through the same method. Therefore, whatever method is utilized to seal the first surface to the second surface to make the pouch perimeter seal 13, the same method is also utilized to form the internal seal 24.

In other words, if the pouch perimeter seals 13 are formed via a heat sealing method, then the internal column seal 24 (i.e., the piercing point 24) is formed at the same time. *Specification*

As Filed, p. 7, ll. 18-23; Specification as Published, ¶ 0031. Thus, the pouch perimeter seals 13 and the piercing point 24 are formed by the same heat sealing method (i.e., heat sealing at the same temperatures, pressures and time periods). Similarly, if crimping is the method, then the pouch perimeter seals 13 and the piercing point 24 are all formed by crimping with the same type crimp texture and pressure. Likewise, if adhesives are the method, then the pouch perimeter seals 13 and the piercing point 24 are all formed by using the same types of adhesive, in the same amounts and with the same associated adhesive enhancement mechanisms (e.g., heating temperatures and times, crimping pressures, curing times, etc.).

In other words, other than the width differences between the different seals, there is no difference between the internal column seal 24 (i.e., the piercing point) and perimeter seal 13 sealing the rest of the first and second surfaces together. Therefore, there is no variation between the method used to seal the first and second surfaces together and the method used to form the internal seal of the column.

In light of these arguments and those contained in the Amendment, Applicants respectfully request the reconsideration and withdrawal the indefiniteness rejections of claims 22-46.

5. Unlike Applicants' recited invention as explained in the preceding section, Bell does have variation between the method used to seal the "permanent seal region[s]" of the side panels and the method used to seal the "peal seal" at the bottom of the column; these variations, namely the use of "alternate pressure/heat combination[s]," "resin," and "two-layer peel seal tape" were quoted from Bell and explained at length in the Amendment and are not merely Applicants' opinion.

The Advisory Action noted that the request for reconsideration had been considered but did not place the application in condition for allowance because "Applicant's argument that the peel seal region and the permanent seal regions in Bell are made by different methods is opinion." *Advisory Action, p. 2, ¶5.*

Unlike Applicants' recited invention as explained in the preceding section, Bell does have variation between the method used to seal the "permanent seal region[s]" of the side panels and the method used to seal the "peal seal" at the bottom of the column. These variations between the "permanent seal region[s]" and the "peal seal" are clearly recited in Bell and include

the use of “alternate pressure/heat combination[s],” “resin,” and “two-layer peel seal tape.” *Bell, col. 10, ll. 36-37, 49 & 57*. These variations between the methods of forming the permanent seals and the peel seals were quoted at length in the Amendment to bring them to the Examiner’s attention.

In the Amendment, Applicants provided a reasoned analysis of the variances between the methods of forming Bell’s permanent seals and peel seal. This analysis is supported by the clear language of Bell and is not merely the opinion of Applicants. Applicants respectfully refer the Examiner to the relevant section of the Amendment and respectfully request careful reconsideration and withdrawal of rejection. In the event the Examiner continues to disagree with Applicants’ position, a reasoned analysis supporting the Examiner’s position is respectfully requested.

6. Bell/Hardy Combination.

The Advisory Action noted that the request for reconsideration had been considered but did not place the application in condition for allowance because “Applicant’s argument that the Bell/Hardy combination is lacking motivation and fails to suggest all the claim limitations is opinion.” *Advisory Action, p. 2, ¶5*.

With respect to the lack of motivation for the Bell/Hardy combination, in the Amendment, Applicants provided a reasoned analysis of why Hardy is nonanalogous art and, as a result, lacks the necessary suggestion or motivation for its combination with Bell. Applicants’ analysis provided the relevant Federal Circuit law regarding nonanalogous art as set out in *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992). Applicants analysis compared the circumstances surrounding the asserted Bell/Hardy combination to those surrounding the nonanalogous art improperly cited by the USPTO in *In re Clay*.

In re Clay makes it clear that for a reference to be considered analogous art, it must be: (1) from the same field as the inventor’s endeavor; or (2) reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 966 F.2d at 658-659. As explained in the Amendment, Hardy fails to meet both of these requirements. Accordingly, Hardy is

nonanalogous art and, as a result, lacks the necessary suggestion or motivation for its combination with Bell.

With respect to the Bell/Hardy combination's failure to suggest all of the claim limitations, in the Amendment, Applicants pointed out that the Final Office Action of September 9, 2003 admitted that the Bell/Hardy combination does not teach "interior end portions gradually diverging from each other," as recited in Applicants' independent claims 1 and 15. Furthermore, Applicants explained that Hardy specifically teaches away from this feature because of leakage concerns. Therefore, the Bell/Hardy combination does not teach or suggest each and every feature of independent claims 1 and 15 and their dependent claims.

Now that Applicants have filed an RCE and the applicable fee, Applicants respectfully request that the Examiner carefully reconsider Applicants' reasoned analysis of the appropriateness of the Bell/Hardy combination (as provided in the Amendment) and withdraw the rejection. In the event the Examiner continues to disagree with Applicants' position, Applicants respectfully request that the Examiner provide a reasoned analysis regarding Applicants' position.

CONCLUSION

Now that an RCE has been filed, Applicants respectfully request that the Examiner carefully reconsider Applicants' analysis and positions provided in the Amendment. In the event the Examiner is left with questions regarding Applicants' positions, or the Examiner feels Applicants have failed to correctly understand the Examiner's position, Applicants strongly encourage the Examiner to contact the undersigned to arrange a telephone conference to clarify the issues and expedite the prosecution of this application.

Respectfully submitted,

DORSEY & WHITNEY LLP
Customer Number 25763

Date: 3-8-04

By: 

S. Wade Johnson
(Reg. No. 50,873)
Intellectual Property Department
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
(612) 340-8835